

ROBERT T. REYNOLDS

IBLA 81-701, 82-166

Decided December 31, 1981

Appeals from decisions of New Mexico State Office, Bureau of Land Management, deeming unpatented mining claims abandoned and void. NM MC 82098 through NM MC 82101.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims--Mining Claims: Recordation--Federal Employees and Officers: Generally

There is a rebuttable presumption that administrative officers properly discharge their duties and do not lose or misfile documents timely filed. Where, however, the BLM computer print-out indicates that evidence of assessment work was received for one of appellant's four mining claims, and where appellant submits a copy of proof of labor for all four claims which had been recorded in the proper county recording office and then submitted to BLM, and where BLM had no record of having issued any adverse decision for the fourth claim but appellant submitted a copy of the decision he had received, the cumulative evidence rebuts the presumption of regularity.

APPEARANCES: Robert T. Reynolds, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert T. Reynolds appeals the May 19, 1981, and July 7, 1981, decisions of the New Mexico State Office, Bureau of Land Management (BLM), which declared his unpatented lode mining claims, the Ruth, Ruth #2, Ruth #3, and Ruth Extension, NM MC 82098 through NM MC 82101, abandoned and void because no evidence of assessment work or notice of intention to hold the claims had been filed with BLM on or before December 30, 1980, as required by 43 CFR 3833.2-1.

Appellant asserts that he did file the evidence of assessment work for the 1980 assessment year before December 30, 1980, for each of the four claims, but that the document did not have the identifying BLM serial numbers as they had not been given to him.

As appellant submitted a statement of reasons for his appeal from the July 7 decision to the Board, and BLM did not forward the case file for NM MC 82101, inquiry was made by the Board. BLM responded that it had no record of the decision, nor of receipt of the proof of labor for any of the four claims. However, a copy of the BLM computer print-out showed the evidence of assessment work had been received for the Ruth Extension claim, NM MC 82101, on October 1, 1980. Further inquiry by the Board elicited the information that BLM had asked appellant if he had received a decision relating to the Ruth Extension, and that appellant had sent BLM a copy of the decision of July 7, together with a copy of the proof of labor which he had filed August 29, 1980, in the office of the Recorder, Hidalgo County, New Mexico. The proof of labor pertained to all four claims.

[1] There is a rebuttable legal presumption that administrative officials properly discharge their duties and do not lose or misfile documents timely filed with them, as alleged by appellant in this case. Where, however, as in this case, the BLM computer print-out indicates that evidence of assessment work was received for one claim of the appellant's four claims, and where appellant has submitted a copy of the proof of labor for all four claims, which was recorded in the proper county office, and which he asserts was also filed with BLM, and where BLM had not record of having issued an adverse decision for the fourth claim but appellant submitted a copy of the decision, we find the cumulative evidence rebuts the presumption of regularity. Thus, we find that the evidence of assessment work was timely filed. See L. E. Garrison, 52 IBLA 131 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside, and the cases remanded with instruction to

BLM to consider that evidence of assessment work was properly and timely filed for the Ruth, Ruth #2, Ruth #3, and Ruth Extension lode mining claims in 1980.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

